

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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KEVIN V. BYNG,

Plaintiff,

v.

No. 9:07-CV-471  
(GLS/DRH)

JAMES L. CAMPBELL, et al.,

Defendants.

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**APPEARANCES:**

KEVIN V. BYNG  
Plaintiff pro se  
07-A-3241  
Fishkill Correctional Facility  
Post Office Box 1245  
Beacon, New York 12508

ROBERT P. ROCHE, ESQ.  
Counsel for Defendants Sheriff James Campbell,  
Albany County Sheriff's Department, D. Delong  
and M. Rose  
36 South Pearl Street  
Albany, New York 12207

THUILLEZ, FORD, GOLD, BUTLER  
& YOUNG, LLP

Counsel for Defendants Correctional Medical Services, Inc.,  
Gloria Cooper, Jill Harrington, Dr. Salzman and Dr. Robnowitz  
20 Corporate Woods Boulevard, 3<sup>rd</sup> Floor  
Albany, New York 12211

**OF COUNSEL:**

WILLIAM C. FIRTH, ESQ.

**REPORT-RECOMMENDATION**

In a letter dated February 9, 2009, plaintiff moved to dismiss the above-captioned action without prejudice. Docket No. 132. Defendants filed responses opposing any dismissal that is without prejudice. Docket Nos. 138, 139. Under Fed. R. Civ. P. 41(a)(1)(a)(ii), where as here, the opposing parties have answered, a plaintiff may dismiss an action without leave of

court only upon the stipulation of the defendants. The defendants here have refused such a stipulation unless the dismissal is with prejudice. Accordingly, it is hereby

**RECOMMENDED** that plaintiff's motion to dismiss this action without prejudice (Docket No. 132) be **DENIED**; and it is further

**ORDERED** that the Clerk serve a copy of this Order on the plaintiff by regular mail.

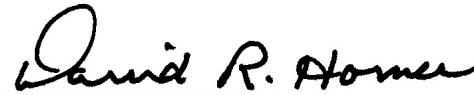
Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

**FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE**

**APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

**IT IS SO ORDERED.**

Dated: March 4, 2009  
Albany, New York

  
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United States Magistrate Judge